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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

BARE ESCENTUALS BEAUTY, INC.,

Plaintiff,

vs.

INTELLIGENT BEAUTY, LLC,

and

DOES 1-12,

Defendants.

**Case No. 3:09-cv-00382 (CRB)(JCS)**

**DECLARATION OF K. JOON OH IN  
 SUPPORT OF BARE ESCENTUALS'  
 PORTION OF JOINT LETTER RE: BARE  
 ESCENTUALS' 30(b)(6) WITNESSES**

**Trial Date: May 17, 2010  
 Time: 8:30 a.m.  
 Room: 8**

Winston & Strawn LLP  
 101 California Street  
 San Francisco, CA 94111-5894

I, K. Joon Oh, declare under penalty of perjury that the following statements, made from personal knowledge, are true and correct:

1. I am an attorney at law, duly licensed to practice law in the State of California. I am an associate with the law firm of Winston & Strawn LLP, counsel of record for Plaintiff Bare Escentuals Beauty, Inc. ("Bare Escentuals") in this action, and am authorized to make this declaration in that capacity. I make this declaration of my own personal knowledge.

2. Exhibit A contains transcript excerpts from the January 27, 2010 deposition of Leslie Blodgett.

3. Exhibit B contains transcript excerpts from the February 9, 2010 deposition of Michael Thompson.

4. Before Mr. Thompson's deposition on February 9, 2010, Mr. Thompson and I reviewed documents to prepare for his deposition, including customer service emails, documents from the Better Business Bureau, and communications involving various state attorneys general.

5. Exhibit C is a copy of the Parties' agreement regarding discovery. This document was circulated by Intelligent Beauty's counsel on December 16, 2009, following the Parties' meeting at the courthouse (hereinafter, "courthouse agreement").

6. Pursuant to the courthouse agreement, the Parties agreed upon the following search terms to search for consumer complaints:

butylene, cyclomethicone, propylene glycol, D&C, FD&C, talc\*, \*paraben\*, Cakey, heavy, breakout, "break out", acne, clog\*, irritat\*, coverage NOT ("Maximum Coverage Concealer Brush" or "Maximum Coverage Brush" or "Full Coverage Kabuki Brush"), rash, dry NOT "Wet/Dry Shadow Brush", flaky, goopy, sensitive w/5 (ingredient or chemical), harmful w/5 chemical.

7. Bare Escentuals has reviewed and produced nearly 80,000 pages of consumer communications responsive to the courthouse agreement and search terms.

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1 I declare under the penalty of the laws of the United States of America that the foregoing is  
2 true and correct. This declaration was executed on February 18, 2010, at San Francisco, California.

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4 /s/ K. Joon Oh

5 K. Joon Oh  
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EXHIBIT A

TO DECLARATION OF K. JOON OH

**DOCUMENT FILED UNDER SEAL**

EXHIBIT B

TO DECLARATION OF K. JOON OH

**DOCUMENT FILED UNDER SEAL**

## EXHIBIT C

TO DECLARATION OF K. JOON OH



**Bare Escentuals Issue No. 1:**

Searching relevant custodians and any affiliate folder to the extent any exist.

1. Search Terms
  - a. References to Bare as a stand alone term in affiliate emails regardless of subject matter
  - b. The re: lines regardless of subject matter
  - c. RAWminerals or “RAW Minerals” or “RM” subject to category 2
- 2.. Concepts for manual search re: RAWminerals or RAW Minerals:
  - a. Ad Content, Ad performance, affiliate performance;
  - b. Approvals regarding advertising, denials regarding advertising, recommendations regarding advertising, suggestions regarding advertising, modifications regarding advertising, revisions regarding advertising, and criticism regarding advertising
  - c. Guidelines for affiliates or their advertising, best practices of affiliates or their advertising, and supervision of affiliates or their advertising
  - d. Customer complaints, satisfaction, dissatisfaction, refund, returns, and free trial offer.
  - e. Revenues in general in aggregate (not granular).

**Intelligent Beauty No. 1:**

The parties agree to the following search terms for products marketed or sold under BAREMINERALS, RAREMINERALS and anything marketed or sold under the BAREMINERALS kit:

- a. butylene, cyclomethicone, propylene glycol, D&C, FD&C, talc\* or \*paraben\*]
2. Concepts
  - a. Complaints, inquiries, satisfaction, dissatisfaction regarding ingredients
  - b. Inclusion, removal, discussion or consideration of use of those ingredients or discontinuance of use of searched terms
  - c. Tests, studies, surveys that refer, relate to or mention the search terms

Time limit for time when products were marketed from January 1, 2007.

Parties agreed to limit to max of 10,000. If the results will exceed that amount, parties to be reasonable in further limitations.

**BE No. 2:**

IB agrees to produce any SEO documents related to RAWminerals.

**BE No. 3:**

IB agrees to do searches described in Donaldson Decl., p. 2, line 1 with the modification to substitute “within 10” for “and”; agreed to line 2 as is and agreed to lines 11 and 12 as is. Within documents yielded by those searches IB will do a concept search for the use or selection of the mark as two words v. one word.

**IB: No. 2**

BE agrees to produce all responsive documents for products marketed under the BAREMINERALS mark, the RAREMINERALS mark and any product sold in the BAREMINERALS kits. The timeframe will be for products marketed from January 1, 2007 to the present.

**IB No. 3:**

BE will produce all reports regarding the performance of the infomercials referenced in the SEC 10-K filings filed in February 2008 and February 2009. BE will also produce all emails regarding the reports. Confirmed that any report that mentions RAW minerals or IB and that has been located after a reasonably diligent search is already produced.

**BE No. 4:**

Parties agreed:

IB will produce all customer communications regarding free trial using the search terms previously agreed upon. IB will also produce any complaints about the free trial from third parties or government agencies. IB will also produce communications concerning the free trial program, whether they are internal, to or from government agencies, or with the general public.

Offering to do additional trials using Free or Trial + additional negative terms. BE to provide 30 more words for searching tomorrow morning.

**IB No. 4:**

Parties agreed as follows:

BE agrees to conduct a search for customer complaints using the search terms set out in supplemental response to RFPs 57 and 60 plus three terms from Daily Candy ad, FD&C, D&C, \*paraben\*, Talc\*.

**IB No. 5:**

Parties agreed as follows:

BE will supplement response to include past plans.

**BE No. 5:**

IB will produce the documents concerning the referenced IB subject lines and Exhibit I and ads that combine “better than b/Bare” or “better than bareMinerals” with the statements about color/coverage, need for concealer, or heavy/cakey/irritating, or substantially similar statements in close proximity].

**IB No. 6:**

BE offers to produce documents sufficient to reflect when products were first sold online.

Online or Internet or eCommerce or Bareescentuals.com or bareminerals.com or rareminerals.com w/5 sale or market, begin, launch, commence, start

Timeframe: Sept. 2006 through 3 months after launch including soft launch

**IB No. 7:**

Limit production to settlement agreement subject to court ruling

Parties will submit joint stipulation and proposed order re production of withheld IB affiliate agreement.